(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.A.No.601/2003

Appellant	Pusau Rawat age 20 years S/o Tod Chand Rawat R/o Village – Tilda Bandha, Police Station Suhela, District Raipur (CG)
	Versus
Respondent	State of Chhattisgarh; through Station Officer, Police Station Suhela, District-Raipur (CG)

Memo of appeal under Section 374 of Criminal Procedure Code.

Present :

Shri Vivek Rathore, learned counsel for the appellant.
Shri Ashish Shukla, learned Government Advocate for the State/respondent.

ORAL JUDGMEMNT
(17.05.2007)

SUNIL KUMAR SINHA, J.

Heard.

(2) This appeal is directed against the judgment of conviction and order of sentence dated 8.5.2003 passed in special sessions case No.235/2002 by the Special Judge, under Scheduled Caste and Scheduled Tribe, (Prevention of Atrocities), Act, 1989 Raipur, whereby the said Court after holding the appellant guilty of the offence punishable under Section 376 of IPC, sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default of payment of fine to undergo further rigorous imprisonment for 3 months. The appellant was also charged under Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Special Act)

Cr.A.No.601/2003

(3) The case of the prosecution is that on the night of 15.10.2002, the prosecutrix (PW-1) had gone to watch video film in the village along with her brothers and sisters. When she was returning to her house from the place of the said video film at about 12.00 in the night and has reached near the house of one Brijlal Satnami, the appellant met her on the way, caught hold of her, gagged her mouth and threw her on the ground and committed forceful sexual intercourse against her. It is also the case of prosecution that when the appellant and the prosecutrix both were at the place of occurrence, Bisouha Rawat (PW-2) noticed their presence, went there and saw that someone is running away from the place of occurrence. When he reached near the prosecutrix and asked about her identity, then she disclosed that she is the daughter of Kevra Bai (PW-3) and was ravished by the appellant, who has just ran away from the place of occurrence. Thereafter, she told the story to her mother who came there and later, a village 'Panchayat' was organized and a report was lodged on 16.10.2002. During the course of investigation, the prosecutrix was sent for medical examination. She was examined by Dr. Parzana Khan (PW-11) who prepared her report vide (Ex.P-14). According to the said report, she noticed two abrasions on the thigh of the prosecutrix and she complained pains while moving. On the internal examination, she found that the hymen of the girl was ruptured, it was bleeding and there were scratches in the private part. Vagina was full of blood and the examination was painful. According to her opinion,

the girl was subjected to forceful sexual intercourse and there were signs of resistance also. She had referred the prosecutrix for radiological examination which was conducted by Dr. Nimesh Sharma, (PW-9) who prepared his report (Ex.P-10), according to which the prosecutrix was found to be between 16 and 18 years of age. The caste certificate of the prosecutrix (Ex.P-8) was also seized in which it was stated that she belongs to Satnami caste which has been declared to be the Scheduled Caste. After arresting the appellant and after recording the statement of prosecution witnesses and after completion of investigation, the charge sheet was filed in the Court of Judicial Magistrate First Class, Baloda Bazar, Raipur who in turn committed the case to the Court of Sessions vide order dated 3.12.2002 from where the matter was received on transfer to the Court of Special Judge, Raipur who conducted the trial and convicted the appellant as aforementioned. It is against this judgment of conviction and order of sentence, passed by the Special Judge, the appellant has filed this criminal appeal.

(4) The learned Special Judge acquitted the appellant under Section 3(i)(xi) of the Act as according to the findings of the said Court, the offence of rape was not committed for the reason and on the ground that the prosecutrix belongs to a particular caste.

(5) So far as the offence punishable under Section 376 of IPC is concerned, the trial Court recorded a finding, vide para 10 of the judgment, that the prosecutrix was above 16 years of age on the date

of incident and the prosecution could not prove that she was below 16 years of age. The said Court held that in fact she was above 16 years and was able to give her consent so far as the offence punishable under Section 376 of IPC is concerned. However, the appellant was convicted because the said Court held that he had committed forceful sexual intercourse with the prosecutrix against her will.

(6) Learned counsel for the appellant argues that on the basis of the evidence of prosecutrix and also on the basis of Bisouha Rawat (PW-2) it would appear that the prosecutrix was a consenting party and had adopted a hostile attitude only when she was caught red handedly by Bisouha Rawat (PW-2) and she could not explain as to why she was there at about 12.00 in the night along with a boy whom she silently allowed to run away from the place of occurrence after being noticed by the said witness and that too after the sexual intercourse was over.

(7) On the other land, learned State counsel opposes these arguments while supporting the judgment of conviction and order of sentence passed by the Special Court.

(8) I have heard the learned counsel for the parties at length and have also perused the records of special case.

(9) The prosecutrix (PW-1) deposed that when she was returning back to her house after watching the video film at 12.00 in the night,

the appellant met her on the way near '*Sirsa*' tree, caught hold of her on which she cried, but he gagged her mouth and threw her on the ground and thereafter committed forceful sexual intercourse against her. She further deposed that when all this was over, Bisouha Rawat (PW-2) came over there and then only the appellant ran away from the scene of occurrence and she narrated the story to Bisouha Rawat (PW-2) and then her mother came there. She has narrated the story to her mother also. It has come in the cross-examination of this witness that she had gone to watch a video film along with her brothers and sisters and they were also sitting there and watching the film. But, she could not explain as to why she left their company and all alone left the place of video film and went to the place of occurrence. She has also admitted vide para 8 of her testimony that she had seen that the appellant was also watching the same video film. She has further admitted vide para 10 that near the '*Sirsa*' tree, where the incident took place, there are houses of Bisouha Rawat and Brijlal. In normal circumstance, when she was forcefully dragged from the main road to the place of occurrence i.e. near '*Sirsa*' tree, she could have resisted it and could have raised hue and cry and if that would have been done, it would have been heard by the inmates of the house of Brijlal and Bisouha. Moreover, when she was subjected to forceful sexual intercourse and the appellant was trying to commit the said act against her will, at that time also, she could have resisted and could have made cries. All these attempts were not made by the prosecutrix for which she has not given any explanation.

(10) If we examine the evidence of Bisouha Rawat (PW-2) it would appear that firstly, he was not in his house as he had gone to somewhere else and had reached his house at about 12.00 in the night and was when he keeping his bicycle in front of his house, he could hear murmuring of the girl from the side of *'Sirsa'* tree. Then, voluntarily, he went near the tree and saw the prosecutrix there. At that time, he also saw that a boy is running from that place but he could not identify him on account of darkness. In para 3 of his evidence, he deposes that when he asked the prosecutrix as to who she is?, firstly, she did not disclose her identity to him, but, later on, she disclosed that she is the daughter of Kevra Bai (PW-3) and thereafter she narrated the story by saying that she was dragged by the appellant herein and the appellant had put off her underwear. That is to say, that she did not disclose that she was subjected to sexual intercourse by the appellant. He further deposes that thereafter Brijlal and Bhulau woke up and reached to the scene of occurrence and the mother of the prosecutrix also reached there. The mother asked the girl as to why she alone had come there? On this only, she told her mother the name of the boy and nothing more.

(11) The evidence of these two witnesses, along with the evidence of mother Kevra Bai (PW-3), would show the conduct of the prosecutrix. She left the place of video film all alone, whereas, she had gone to that place along with her brothers and sisters and when she was caught by the appellant on the way, as stated by her, she did not raise any alarm and when they reached the scene of occurrence i.e. near the *'Sirsa'*

tree, even there also she did not raise any alarm, whereas it is situated near the house of two villagers and even after commission of sexual intercourse when Bisouha Rawat (PW-2) came to the place of occurrence, she did not disclose the story to him and when she was asked by the said witnesses, then only, she disclosed that she was forcibly brought there by the appellant and had only disclosed that the appellant had put off her underwear, that is to say that she did not think it better to disclose that she was subjected to sexual intercourse. The evidence of Bisouha Rawat (PW-2) would show that he has heard the murmuring only and had voluntarily gone to the place of occurrence and then he could notice the presence of the prosecutrix there and could also see that a boy is running away from the said place.

(12) Learned counsel for the State has very much stressed upon the medical report of the prosecutrix and also the evidence of Dr. Parzana Khan (PW-11) in which she has stated that she had noticed injuries on the thigh as well as on the private parts of the prosecutrix. His contention is that all this negatives the theory of consent and suggests a forceful sexual intercourse. The contention has no force. Regarding the evidence of signs of resistance, a question has been asked in the cross-examination and the Doctor has replied vide para 6 of her evidence that on the basis of two abrasions on the thigh of the prosecutrix, she was saying that there were signs of resistance. It is the matter of common knowledge that when the sexual intercourse is performed on the earth, then such kind of injuries are likely come on the body, even though the girl is a consenting party. So far as the

injuries of private parts are concerned, they may also take place in the normal intercourse which may be the result of forceful penetration and the relative force used by the man as also by the lady and they do not, principally, suggest the commission of rape and on this evidence only, such arguments cannot be entertained.

(13) In the facts and circumstances of this case, on the basis of evidence of prosecutrix, her mother and the eye witness i.e. Bisouha Rawat (PW-2), the possibility of the prosecutrix being a consenting party with the appellant cannot be fully ruled out in this case and looking to the conduct of the prosecutrix, the appellant cannot be convicted under Section 376 of IPC.

(14) In the result, the appeal is allowed. The conviction and sentence awarded to the appellant under Section 376 of the IPC are set aside. It is stated that the appellant is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
Sunil Kumar Sinha
Judge

Priya